

- (1) Whether the Award of February 2, 1988, may be reviewed and modified subsequent to the expiration of at least 415 weeks from the date of accident.
- (2) Whether claimant's condition has worsened.
- (3) If claimant's condition has worsened, whether claimant has a permanent total disability.
- (4) Whether claimant's permanent total disability existed at the time of the Award in February 1988, and if so, whether the Award may be reviewed and modified to represent the inadequacy of the Award entered into at that time.
- (5) Claimant's entitlement to future medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law.

Claimant's original injury occurred on February 6, 1985, with an Award entered into between the parties on February 2, 1988. Respondent and the Kansas Workers Compensation Fund contend, that at that time, the issue of permanent total disability was compromised and settled. A review of the settlement hearing transcript held February 2, 1988, finds some confusion regarding the agreement. While respondent's attorney did contend, on the record, that permanent total disability was being compromised, it appeared as though claimant's attorney did not agree with this position. It is clear from the record that claimant's entitlement to future medical and the right to review and modification were left open as issues that could be dealt with in the future.

Respondent further contends that since claimant's motion to review and modify pursuant to K.S.A. 44-528 was not filed until 415 weeks had run from the date of injury the claimant was precluded from pursuing review and modification. The Appeals Board notes that with permanent partial disability compensation claimant is limited to 415 weeks of benefits. Were claimant seeking review and modification of a permanent partial disability award in order to increase the permanent partial disability and the review and modification was filed after the end of 415 weeks, the Appeals Board might, under those circumstances, consider claimant's time to have lapsed. However, with a permanent total disability no time limit is set by statute. The only limitation on permanent total disability compensation is the \$100,000.00 limitation applicable on the date of claimant's injury. As claimant has not exceeded this \$100,000.00 limitation her application for review and modification when seeking permanent total disability compensation is not limited in time.

The evidence supports a finding that claimant's condition has worsened since 1988 and that claimant currently is permanently totally disabled. As such, the Appeals Board adopts the findings and conclusions set forth in the Award of the Administrative Law Judge in toto as though set out fully herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward, dated July 12, 1994, should be, and is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Topeka, Kansas
James C. Wright, Topeka, Kansas
William W. Sneed, Topeka, Kansas
James R. Ward, Administrative Law Judge
Philip S. Harness, Director